

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL NO. 1158 OF 2005
IN
ARBITRATION PETITION NO. 531 OF 2003**

The Shipping Corporation of India Ltd.] .. Appellants
(Ori.Petitioners)

Versus

Mare Shipping Inc. Monrovia, Liberia.] .. Respondents
(Ori.Respondents)

Mr. V.C. Kotwal a/w Mr. C.S. Balsara i/b M/s.Bhatt & Saldhana for the appellants.

Mr. Prashant Pratap a/w Ms. Monica Kohli and Mr. M.K. Khatri i/b M/s. P.S. Pratap for respondents.

**CORAM: R.M. LODHA &
ANOOP V. MOHTA, JJ.**

DATED: 20TH JANUARY, 2006

P.C. :

. Heard Mr. V.C. Kotwal, the learned senior counsel for the appellants.

2. Initially, the Award came to be passed by the Arbitral Tribunal on 26th August, 2003 in the disputes between the appellants and the respondents arising out of Charterparty dated 9th November, 1999. The said Award came to be challenged by the present appellants by way of Petition No.531 of 2003. The learned Single

Judge of this Court, by his order dated 25th April, 2005 remitted the Award to the Arbitral Tribunal for resuming arbitral proceedings in order to enable the present respondents (claimants) to lead oral and documentary evidence to prove the existence and tender of notice of readiness dated 15th December, 1999. The Arbitral Tribunal, pursuant to the order dated 25th April, 2005 resumed Arbitral proceedings. The claimant to prove the existence and tender of notice of readiness dated 15th December, 1999 led evidence of Sunil D'Souza. On the other hand, the present appellant led evidence of S.V. Joshi. Sunil D'Souza, in his evidence stated that in response to the telephone conversation and the e-mail of 5th July, 2003, Captain Jude Desouza sent an e-mail dated 8th July, 2003 stating thus: "Dear Sunil, As requested by you, please find two attachments to this e-mail pertaining to the NOR submitted for M/T Prestige at Vadinar." He further submitted that alongwith the said e-mail the two attachments which referred to the e-mail and which came with the e-mail were : (one) Notice of Readiness dated 15th December, 1999 received by Baxico., Jamnagar from the Master of M/T Prestige and (two) Notice of Readiness tendered by Baxico. to the receivers of cargo Indian Oil Corporation of Vadinar dated 16th December, 1999. Mr. Sunil D'Souza was cross-examined and the Arbitral Tribunal observed that

throughout his cross-examination Mr. Sunil D'Souza gave the impression that he was a credible witness and gave honest answers to what was within his knowledge. As regards S.V. Joshi the witness examined by the appellant, the Arbitral Tribunal observed that the conduct of S.V. Joshi was exactly the opposite.

3. In support of its finding that the claimant has been able to prove the existence of the Notice of Readiness dated 15th December, 1999 and its service by the Master on the agents of the respondent at Jamnagar, the Tribunal relied upon the following aspects:

"(a) Mr. Sunil D'Souza, witness for the Claimant asked Capt. Judge DeSouza (official of the Respondent's agent's head office at Mumbai) for a copy of the NOR sent by the master to the Agents at Jamnagar.

(b) Capt. Judge DeSouza forwarded this document along with his email of 8/7/2003 to Sunil D'Souza.

(c) Mr. Sunil D'Souza produced this document along with the aforesaid email of 8/7/2003 during his testimony before the Tribunal.

(d) The fact that Capt. Judge DeSouza sent his email to Mr. Sunil D'Souza is also confirmed by Mr. S.V. Joshi during his testimony before the Tribunal. The assertion of the Respondent that this email was sent without the attachment is totally rejected by the Tribunal for reasons fully set out in the earlier part of the findings.

(e) No attempt was made by the Respondent to

rebut Mr.Sunil D'Souza's evidence by producing Capt.Jude DeSouza to say that he did not receive the NOR from his Jamnagar office and that he did not send his email of 8/7/2003 to Mr.Sunil D'Souza. It is significant that the Respondent had access to Capt.Jude DeSouza at all times and had visited his office during his testimony but for obvious reasons he was not produced before the Tribunal to give evidence."

4. The learned senior counsel for the appellants sought to contend that the existence of Notice of Readiness dated 15th December, 1999 1999 has not been proved by the claimant in accordance with law. We find no substance for what we have already noticed above.

5. In the circumstances we are satisfied that the learned Single Judge did not commit any error in rejecting the Arbitration Petition.

6. The Appeal does not deserve to be admitted.

7. Dismissed in limine.

Sd/-
[R.M. LODHA, J.]

Sd/-
[ANOO V. MOHTA, J.]

[srpasha@hc]